

## REMARKS

Claims 3-5, 9-17, 19 and 20 have been canceled, while Claims 1,2, 6-8 and 18 remain pending. Applicants submit no new matter has been added by the requested amendments to Claims 1 and 2. Support for the amendments appear throughout the specification, including, for example, the following:

- (1) the definition for “HMT” appears on page 4, lines 4-6;
- (2) the identification of SEQ.ID.NO:26 as an HMT nucleic acid appears on page 10, line 14;
- (3) “capable of eliciting an immune response against at least one epitope of a flea HMT protein appears on page 49, lines 12-14; and
- (4) “having at least 95% identity” appears on page 51, lines 4-5.

The pending claims have been rejected under 35 U.S.C. 101 and 112, first paragraph. Applicants have reviewed the grounds for the rejections, but traverse for the reasons set forth below.

### I. Rejection Under 35 U.S.C. 101

Claims 1-8 and 18 (as applied to SEQ.ID.NO:26) stand rejected as lacking a credible, specific and substantial utility. Applicants, however, note the specification provides several credible, specific and substantial uses for flea HMT nucleic acid molecules and proteins encoded by such nucleic acid molecules. Nowhere does 35 U.S.C. 101 require the specification to provide a utility that is “unique” to the claimed nucleic acid molecules. The specification provides several utilities for the claimed nucleic acids, including, for example, eliciting an immune response against flea HMT proteins, vaccines and other therapeutic uses. Therefore, the fact that the claimed molecules shares utilities that can be attributed to several other disclosed nucleic acids molecules in the application should not be a basis for rejecting the claims under 35 U.S.C. 101.

### II. Rejection Under 35 U.S.C. 112 (Enablement)

Claims 1-8 and 18 also stand rejected as failing to enable one skilled in the art to use the claimed invention based on the specification failing to provide a credible, substantial or specific utility as stated for the 35 U.S.C. 101 rejection. As argued above, Applicants submit the specification provides ample substantial and specific utilities, even though such utilities may not be unique to the claimed nucleic acid molecules. Because these utilities are taught in the specification, Applicants submit the specification provides sufficient teaching to one skilled in the art to use the claimed invention. It is well-recognized that the teachings within a specification are presumed to be accurate unless the Patent Office can provide

objective evidence to the contrary. Throughout the specification, Applicants have disclosed several uses and have given detailed guidance to those skilled in the art for carrying out such uses (see, e.g., page 71, line 2 through page 72, line 6). Additionally, Claim 1 now contains a functional limitation to the claimed nucleic acids.

II. Rejection under 35 U.S.C. 112 (written description)


Since Claim 3 has been canceled and Claims 6-8 and 18 have been amended to depend from Claim 1, Applicants submit this rejection is now moot.

CONCLUSION

In light of the foregoing amendments and remarks, Applicants request the withdrawal of the rejections and solicit an allowance of the claims. The Examiner is invited to contact the undersigned should any issues remain.

Respectfully submitted,

Dated: June 9, 2005

By: \_\_\_\_\_

Theresa A. Brown, Esq.  
Registration No. 32,547  
Heska Corporation  
3760 Rocky Mountain Ave.  
Loveland, CO 80538  
Telephone: (970) 493-7272  
Facsimile: (970) 619-3011